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Olin Furr  
440 Oceana Way  
Carolina Beach NC 28428

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation". The section further states that "the Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind".

Based on Article XIV Sec. 40-425 staff's determination is that the extent of the facility has not increased in size just the volume of the number of parking spaces within the boundary of the facility. It is my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal [it](#), please find the attached appeal form. Below is the ordinance language for reference.

#### **ARTICLE XIV. - NONCONFORMING SITUATIONS**

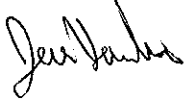
##### **Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.**

- (a) *No increase in the extent of nonconformity.* Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
  - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
  - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Please be advised that any appeal of my determination must be filed by 11/19/23.

Sincerely,



Jeremy Hardison

Planning & Development Director